IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 652

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Petitioner.

v.

R. H. BOULIGNY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

The court below ruled that no unincorporated association, regardless how complete its legal personality, can have a citizenship for diversity purposes. As we showed in the Petition, that holding is in direct conflict with decisions of several other circuits, the most recent being *Mason* v. *American Express Co.*, 334 F. 2d 392 (2d Cir. 1964).

The Company does not seriously dispute that the decision below, as written, conflicts with *Mason*. See Br. in Opp. p. 10. Instead, it argues that the court below might have reached the same result by different routes. The simple answer, of course, is that the court below did *not* adopt these alternative grounds, though they were advanced by the Company below. And we seek review of what the court *did* do, not what it *might have* done.

Nonetheless, we shall demonstrate that the points advanced here by the Company lack merit.

1. The Company refers, in its brief in opposition (p. 3), to the Union's "many" members in North Carolina. "Many," of course, is a relative term. However, lest the Court draw an erroneous impression, we wish to point out that the Union's North Carolina membership at the time this suit was filed constituted less than one-tenth of one percent of the Union's total membership.

2. The Company argues strenuously that an unincorporated association cannot be a citizen of a State unless it is "created" by the laws of that State. (Br. in Opp., pp. 3, 6-9, 10, 11-12.) Indeed, the Company even suggests that such "creation" is a Constitutional prerequisite for citizenship (*Id.*, pp. 7-8). But the Company nowhere explains the basis for this contention, and it is clear that it has no foundation.

The courts have had no difficulty concluding that natural persons are citizens of particular States, though they are not created by the laws of any State. And Congress has now declared that corporations have citizenships in States other than those of their creation, 28 U.S.C. § 1332(c). (The Company brands this latter development "paradoxical", Br. in Opp., p. 9; indeed on the Company's reasoning § 1332 (c) is unconstitutional).

Since the purpose of the diversity grant is to prevent prejudice to foreigners, the test of citizenship for diversity purposes is attachment, not creation. One is a "citizen," for diversity purposes, of the State to which he is most closely attached, and in which he is least likely to suffer regional prejudice. Thus, a natural person, though born in one State, may upon changing his domicil become a citizen of another. See, e.g., *Morris* v. *Gilmer,* 129 U. S. 315, 328 (1889). A labor union, like a corporation, is most closely attached to the State of its principal place of business, and accordingly

that is the place where, for diversity purposes, it is a citizen.[1]

The Company states that "This Court has never held for the purpose of establishing diversity jurisdiction that any association might be a citizen of a state merely because its principal place of business is located therein." (Br. in Opp., p. 7.) We think this statement is incorrect.[2] But in any event Congress, in the reports accompanying the 1958 amendments, expressed its view that the diversity statute had *always* been intended to make a corporation a citizen of the

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[1] The Brief in Opposition notes that the Union did not introduce evidence in support of its allegation that Pennsylvania is its principal place of business. The reason is simple: the motion to remand did not dispute this allegation. In any event, it is common knowledge that —whether measured by number of members, number of employees, location of headquarters, or any other standard—Pennsylvania is the Steelworkers' principal place of business.

[2] At the time this Court first held a corporation to be a citizen, corporations invariably incorporated in their principal place of business. Accordingly, though the Court used "State of incorporation" as a convenient formula to define a corporation's citizenship, this definition effectively made corporations citizens of their principal place of business as well. That the Court considered the latter factor at least equally important in determining citizenship is evident from its early decisions. Thus, in *Louisville, C. & C. R. R. Co.* v. *Letson,* 2 How. (43 U. S.) 495, 554 (1844) the Court stated:

> "A suit, then, brought by a citizen of one State against a corporation by its corporate name *in the State of its locality, by which it was created and where its business is done by any of the corporators who are chosen to manage its affairs,* is a suit, so far as jurisdiction is concerned, between citizens of the State where the suit is brought and a citizen of another State." (Emphasis supplied.)

And in *Marshall* v. *The Baltimore and Ohio Railroad Co.,* 16 How. (57 U. S.) 314, 326, 327 (1853), the Court emphasized that it was essential that corporations be deemed citizens of the state of their incorporation, to assure that an out-of-state plaintiff would not be left to the mercy of the State courts of "the State in which the defendant *resides,*" and of which the corporation's "trustees and representatives . . . are usually citizens."

State of its principal place of business. H. Rep. No. 1706, 85th Cong. 2d Sess. 4 (1958):

> "The underlying purpose of diversity of citizenship legislation (which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789) is to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts. *Whatever the effectiveness of this rule, it was never intended to extend to local corporations, which, because of a legal fiction, are considered citizens of another State.* It is a matter of common knowledge that such incorporations are primarily initiated to obtain some advantage taxwise in the State of incorporation or to obtain the benefits of the more liberal provisions of the foreign State's corporation laws. Such incorporations are not intended for the prime purpose of doing business in the foreign State. It appears neither fair nor proper for such corporation to avoid trial in the State where it has its principal place of business by resorting to a legal device not available to the individual citizen." (Emphasis supplied.)

Those courts and commentators concluding that labor unions are citizens for diversity purposes have inevitably located that citizenship in the State of the union's principal place of business. *American Federation of Musicians* v. *Stein*, 213 F. 2d 679, 686 (6th Cir.) *cert. denied*, 348 U. S. 873 (1954); *Ex parte Edelstein*, 30 F. 2d 636, 640 (2d Cir.) (dissenting opinion), *cert. denied*, 279 U. S. 851 (1929); Comment, *Unions as Juridical Persons*, 66 Yale L.J. 712, 749 (1957); 3 Moore, *Federal Practice*, ¶ 17.25, pp. 1415-16 (2d Ed. 1963).

3. The Company advances two bases, not relied upon by the Court below, for distinguishing this case from *Puerto Rico*

v. *Russell & Co.*, 288 U. S. 476 (1933). We deal with them briefly.

(a) At page 5 of the brief in opposition, the Company quotes a paragraph of the *Russell* opinion which, it contends, demonstrates that *Russell* is inapplicable to "associations created in the United States." But that paragraph was discussed by the Second Circuit in *Mason* v. *American Express Co.*, 334 F. 2d 392, 398 (1964), and was regarded by that court as not precluding application of *Russell* to United States associations. Accordingly, if the court below had adopted the argument now advanced by the Company, its opinion—which already is in direct conflict with *Mason*—would have conflicted with *Mason* in still another respect.

(b) The Company states that this Court in *Russell* "cited with approval" the case of *Levering & Garrigues Co.* v. *Morrin*, 61 F. 2d 115 (2d Cir. 1933), *cert. granted on an unrelated ground and affirmed*, 289 U. S. 103 (1933), in which the Second Circuit held that a labor union could not be a citizen (Br. in Opp., p. 5). The portion of the *Russell* opinion to which Respondent refers is the following:

> "But status as a unit for purposes of suit alone, as in the case of a joint stock company, see Chapman v. Barney, 129 U. S. 677; Levering & G. Co. v. Morrin (C.C.A. 2d) 61 F. (2d) 115, 117, or a limited partnership, not shown to have the other attributes of a corporation, Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 499; compare Thomas v. Ohio State University, 195 U. S. 207, has been deemed a legal personality too incomplete; what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as a single citizen." (288 U. S. at 480.)

This passage will not aid Respondent, for two reasons:

(1) *Levering* is categorized as involving an association which had "status as a unit for purposes of suit alone."

While this may have been an accurate description of the labor union's legal status in 1933, that status has of course changed completely in the intervening years. (See cases and legislation cited in the Petition, pp. 12-14.) The court below did not suggest that the modern labor union is not a complete juridical person. Indeed, it repeated without contradiction the district court's conclusion that the Union is "a juridical person as fully and completely as if it were organized as a corporation" (*Appendix* 5). The sole basis for the decision below was that, no matter how complete its legal personality, an unincorporated association cannot be a citizen for diversity purposes.

(2) *Levering,* in the quoted passage from *Russell,* is bracketed with *Chapman* v. *Barney,* which involved a joint stock company.[3] In the *Mason* case, which also involved a joint stock company, this passage was cited to the Second Circuit as evidence that *Russell* had not overruled *Chapman.* The Second Circuit concluded, however, that despite this passage *Chapman* was overruled by *Russell* (334 F. 2d 392, 398-99). Accordingly, had the court below adopted the Company's view that by this passage the *Russell* court was citing "with approval" *Chapman* and *Levering,* its opinion again would have conflicted with *Mason.*

4. The Company suggests that it is "premature" for the court to review the citizenship status of labor unions at this time, because the subject is being studied by the American Law Institute as part of a general review of the diversity statute (Br. in Opp., p. 12). But the wide divergence of opinions among the Institute's members on many problems relating to federal diversity jurisdiction (See 32 U.S.L. Week 2623-27) cautions against any assumption that there will be easy or quick legislative clarification. And this is particu-

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[3] Indeed, it has been suggested by one commentator that the Court in *Russell* was under the misapprehension that *Levering* involved a joint stock company. Comment, *Unions as Juridical Persons,* 66 Yale L.J. 712, 743 n. 180 (1957).

larly true of any proposal which would relate to labor unions. This Court has noted that legislation affecting labor unions is "to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation . . ." *Local 1976, United Bhd. of Carpenters* v. *NLRB,* 357 U. S. 93, 99-100 (1958). We believe the treatment accorded labor unions by some State courts is so vastly different from that accorded by the federal courts as to effect a difference in substantive rights, and we know that many management representatives share this view. Accordingly, any proposed legislation dealing with the allocation of jurisdiction would be treated as though it involved substantive rights, and would have, at best, a problematical fate. We submit that there is no justification for this Court delaying resolution of the highly important, unsettled question of law presented in this case, on the unlikely premise that legislative clarification might be forthcoming at some time in the future.

Respectfully submitted,

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